IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

THURSDAY, THE TENTH DAY OF MARCH
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE Mr. JUSTICE B. SUDERSHAN REDDY

and
THE HON'BLE Mr. JUSTICE C.V.RAMULU

WRIT APPEAL No. 248 of 2003

(Writ Appeal under Clause 15 of the Letters Patent against the Order dated 10-12-2002 in W.P.No.21979 of 2002 on the file of the High Court)

Between:

Smt. P. Sakkubai, W/o Yadagiri,
Aged 40 years, R/o Rusthapur village,

Thurkapally Mandal, Nalgonda district.

..... APPELLANT

AND

1. Smt. J. Pushpalatha, W/o Anandam, aged about

31 years, R/o Rusthapur Village,

Thurkapally Mandal, Nalgonda district.

2. The Election Tribunal (Principal Junior

Civil Judge), Bhongir, Nalgonda district.

3. The Election Officer, Panchayat,

Mr. Md.Shabbir, Turkapally,

C/o Mandal Development Office,

Turkapally, Nalgonda district.

4. The Election Authority, rep. by its

District Collector, Nalgonda, Nalgonda district

.....RESPONDENTS

Counsel for the Appellant: SRI M.SURENDER RAO
Counsel for the Respondent No.1: SMT.N.SHOBA
Counsel for Respondents 2 to 4 : Govt.Pleader for Panchayat Raj

The Court made the following :

JUDGMENT : (per **C.V. RAMULU,J**)

This Writ Appeal is directed against the Judgment of the learned single Judge in W.P.No.21979 of 2002, dated 10-12-2002.

Respondent No.4 in the above writ petition is the appellant herein and 1st respondent herein is the writ petitioner. For convenience sake, the parties are hereinafter referred to as arrayed in the writ petition.

Writ petitioner and the 4th respondent contested the elections for the Office of Sarpanch of Rusthapur Gram Panchayat, Turkapally Mandal, Nalgonda district, which was reserved for Backward Class 'Women' category. Writ petitioner was declared as successful candidate by a margin of 19 votes. While so, the 4th respondent (Smt.P.Sakku Bai), who lost the election filed an election petition being O.P.No.4 of 2001 on the file of the learned Principal Junior Civil Judge-cum-Election Tribunal, Bhongir, on the ground that the writ petitioner was disqualified to contest the election in terms of Section 19(3) of the Andhra Pradesh Panchayt Raj Act,1994 (for short 'the Act') since she gave birth to a third child on 19-2-1996. Writ petitioner contested the election petition. It was her case that she has a third child, but the child was born on 19-2-1995 and not on 19-2-1996 as contended by the 4th respondent. Before the Election Tribunal, Respondent No.4 in support of her case, examined herself as P.W.1 and got examined P.Ws.2 to 4 and marked Ex.A1 to A5. On behalf of the writ petitioner, she examined herself as R.W.1 and got marked Exs.B1 to B7. Further, Ex.C1 and Exs.X1 and X2 were also marked. After considering the entire evidence on record, the Tribunal held that the writ petitioner was disqualified to

contest the election for the Office of the Sarpanch of Gram Panchayat under Section 19(3) of the Act. Aggrieved by the said order of the Tribunal, the above writ petition was filed.

Learned single Judge, after reappreciation of the entire evidence on record, found that unless and until the contingencies provided for under the relevant statute are firmly and clinchingly established, the writ petitioner would not have been declared as disqualified under Section 19(3) of the Act. Learned single Judge also held that the Court has power to review in cases of error apparent on the face of record, cases deciding on no evidence and eschewing of admissible evidence. The election petition was filed challenging the election of the writ petitioner on the ground that the writ petitioner gave birth to a third child after lapse of one year of the commencement of Act, viz., 21-4-1994 and the exemption provided is for the third child born within one year from the commencement of the Act i.e. 21-4-1995. The purpose of requiring the pleadings to be precise, unambiguous and capable of being understood and dealt with by the opponent, is to ensure that opposite party will have an opportunity to put forward his/her case effectively and not taken by surprise during trial or at subsequent stage. While observing so, the learned single Judge held as under:

> "**34**. In the election petition, the 4th respondent alleged that the petitioner had given birth to third child on 19-2-1996. She did not make a reference to the extract of births and deaths Register, which came to be marked as Ex.C1. It is also not in dispute that the name of the petitioner herein does not figure in Ex.C1. The 4th respondent did not plea that the person referred to in the relevant column at Sl.No.6 of Ex.C1 is the writ petitioner herself. Obviously, because there is no pleading, the Tribunal did not frame an issue as to whether the person referred to in column No.6 in Ex.C1 is the writ petitioner at all. In her chief-examination, the respondent No.4, as P.W.1, deposed that the petitioner herein is also called as 'Pushamma' and her husband is called as 'Nandam'. It was elicited from her in the cross-examination that the name of the writ petitioner was Jinna Pushpalatha and the same name was entered in the voters' list and that the name in Ex.C2 was Pushamma. It was also suggested to her that the petitioner is not the person referred to in Ex.C1; she admitted that no person by name Pushamma resided in that village. P.W.2 is one K.Ramulamma, who claims to have performed the delivery of the third child of the petitioner as mid-wife. She too has claimed that the petitioner is known as Pushamma also. She claims to have attended to one-lakh deliveries. It was her case that her daughter-in-law has also gave birth to a child three or four days after the petitioner is alleged to have given birth to her child in February,1996. She does not speak about Ex.C1. Even according to her, the entry was made from the information submitted by a Kavalicar (village servant) to the Village Administrative Officer. Ex.C1 does not contain the registration of the birth of the child said to have been born to the daughter-in-law in the same village with a difference of 3 to 4 days from the date of delivery of the third child of the petitioner. The tone, tenor and content of the evidence of this witness, leaves any Court with no option, but to discard the same. P.W.3 is the Mandal Revenue Officer with whom Ex.C1 was marked. It was elicited through him in the cross-examination that there is no mention

of the name of the petitioner in Ex.C1. P.W.4 is an important witness. He is the person who worked as the Village Administrative Officer at the relevant point of time. He claims to have made the entries in Ex.C1 on the information furnished to him by the village servant. He admitted that he has attested Ex.B1, which is a date of birth certificate issued by the school; where the date of birth of the third child of the petitioner is shown as 19-2-1995. He offers no explanation as to why there are no entries of the year 1995 or the other months in 1996 in Ex.C1, which are said to be the extracts of births in 1995 and 1996. Once he has attested Ex.B1, he cannot vouch for the correctness of the entry in Ex.C1.

37. The petitioner herein had placed before the Tribunal Ex.B1, which is the date of birth certificate issued by the school. Ex.B1 is the date of birth certificate issued by the Head Master of a Government School where the 3rd child of the petitioner has been admitted. Ex.B7 is the extract of the admission register of the school. The Head Master, who made the entries in Ex.B7 and the Headmistress, who issued Ex.B1 are examined. Ex.B1 was attested by P.W.4, the Village Administrative Officer. The Tribunal below appears to have refused to act on these documents in view of the judgment in *Anant Ram v. The State of Punjab* (AIR 1975 P & H 198). It was cited on behalf of the 4th respondent. That case dealt with the entries in non-governmental schools. The Tribunal below recorded a finding that the entry in Ex.B7, the admission register, cannot be connected upon on the ground that there was no basis to entry made therein……

39. An aspect, which needs to be kept in mind is that the election process, is the lifeline of democracy. The result of the elections indicates the mandate given by the electorate. In setting aside the election, a Tribunal or the Court, as the case may be, would not only be depriving of the elected candidate of his or her elected office, but also would be reversing the mandate of the electorate. The same can be resorted to only when the contingencies provided for under the relevant statutes are firmly and clinchingly established. Extension of logic and reasoning have very little place in such cases. The disqualification attached under Section 19(3) of the Act visits the concerned individual with unfavourable and disadvantageous, is not, punitive consequences. In a way, it deprives such persons, of the rights vested in them, or denies to them, which others are entitled to. Even this would result in drastic consequences, so far as such person is concerned. Such deprivation also should be on strong footing and findings, which should be unequivocal and where no second view is possible. Even where two views are possible, the one which respects the verdict of the electorate and sustains the rights of the individual, should be preferred to the one, which reverses the mandate of the electorate or deprives the elected person of his office."

Ultimately, the writ petition was allowed setting aside the order of the Election Tribunal. Aggrieved by the same, the present writ appeal is filed.

Learned counsel for the appellant-4th respondent contended that in villages people are not called exactly by the full name of the person and that it is usually common to call Pushpalatha (writ petitioner) as Pushamma and it is also common to call

Anandam as Nandam. Further, the Births and Deaths Register has more evidentiary value than the date of birth entered in the School Register. The evidence of P.W.3 - Mandal Revenue Officer - coupled with Ex.C1 would clearly establish that the third child of the 1st respondent-writ petitioner was born on 19-2-1996. Once the writ petitioner has admitted that she has a third child, the burden to prove the correct date of birth of that child lies on her and not on the appellant to prove that the date of birth of the third child was 19-2-1996.

Per contra, learned counsel for the writ petitioner-1st respondent supported the judgment of the learned single Judge.

We have given our earnest consideration to the submissions made by both the learned counsel and gone through the entire evidence on record including the order passed in the election petition and also the order in the writ petition.

In Ex.C1 the purported Births and Deaths Register for the month of February,1996, there is one entry wherein the father of the child born was shown as G. Nandam and mother of the child as Pushamma. It is alleged that these two names are the names of the writ petitioner and her husband. It is unfortunate that no such pleading was made in the election petition nor was there any issue framed in this regard nor any credible evidence was let in to prove that the writ petitioner – J.Pushpalatha – was also known as Pushamma and her husband Anandam was also known as Nandam. It is also not there in the cause title showing the name of the 1st respondent in the O.P. (writ petitioner) as Pushpalatha alias Pushamma and Anandam alias Nandam. In the absence of any such thing, this argument of the learned counsel is not tenable and acceptable.

The sole reliance placed by the 4th respondent-appellant is on Ex.C1. Once there is no pleading and there is no issue and no evidence to show that the entries in Ex.C1 are relatable to the writ petitioner and her husband, the evidence of P.W.3 and Ex.C1 itself has no help to the appellant-4th respondent to allege that the date of birth of the third child of the writ petitioner was 19-2-1996; therefore, the said third child was born beyond one year from the commencement of the Act i.e. 21-4-1994.

Insofar as the contention that the burden of proof is on the writ petitioner to prove that

the date of birth of her third child was 19-2-1995 and not 19-2-1996 as alleged by the appellant-4th respondent, learned counsel for the appellant relied upon the reported Judgment in **R.JAYALAKSHMAMMA v. ELECTION TRIBUNAL-CUM-SENIOR CIVIL JUDGE, PUNGANUR** and drawn our attention to paragraph-31 of the said decision, which reads as under:

> ""The election of the petitioner was assailed on the ground that she incurred disqualification under Section 19(3) of the Act. The burden of proof lies on her because as per Section 102 of the Evidence Act, the burden of proof in a suit or proceeding lies on that person, who would fail if no evidence at all were given on either side. Assuming that the respondents 2 and 3 did not produce any evidence to prove that case, it is the petitioner who would not succeed in the case if she fails to prove that her child was born within one year from the date of coming into force of the Act. As rightly pointed out by the learned Senior Counsel, the disqualification under Section 19(3) of the Act would disqualify petitioner once for all in her lifetime to seek election for any office or post under the Act. Therefore, this Court has examined the original record and is of considered opinion that the petitioner has failed to discharge the burden in accordance with law and the learned Tribunal was justified in rejecting the evidence adduced by the petitioner. Be it also noted that after parties lead their evidence burden of proof is not much of relevant, and entire evidence has to be considered. The learned tribunal did that and came to conclusion that petitioner's third child would not have been born on 16.03.1995. After examining the evidence on record, this court does not see any valid ground to differ with learned election tribunal."

Firstly, this is not a case where there was no evidence placed before the Election Tribunal showing that the date of birth of the third child of the writ petitioner as 19-2-1995. In fact, Ex.B1 – Certificate issued by the Head Master dated 21-9-2000 showing the date of birth of the third child of the writ petitioner as 19-2-1995, which was also attested by the Village Administrative Officer and Ex.B7 – Extract of Admission Register issued by the Head Master of Upper Primary School, Rusthapur village to show the date of birth of the third child as recorded in the School Register, were marked on her behalf. These documents were not disproved. Even otherwise, the Judgment relied upon, as extracted above, is of no help to the appellant, since this is a case where both the parties have led evidence and the burden of proof is not of much relevance and the entire evidence has to be considered.

For all the above reasons, we do not find any ground to interfere with the well considered and well reasoned judgment of the learned single Judge. Writ Appeal fails and is liable to be dismissed.

Accordingly, the Writ Appeal is dismissed; but without any order as to costs.

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B.Sudershan Reddy, J

10-3-2005

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C.V.Ramulu, J

prk

DEPUTY REGISTRAR

To

1. The Election Tribunal (Principal Junior

Civil Judge), Bhongir, Nalgonda district.

2. The Election Officer, Panchayat,

C/o Mandal Development Office,

Turkapally, Nalgonda district.

3. The District Collector, Election Authority,

Nalgonda, Nalgonda district

4. Govt.Pleader for Panchayat Raj, High Court Buildings, Hyderabad (OUT)

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